

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

	X	
In re PAYMENT CARD INTERCHANGE	:	No. 05-md-1720 (MKB)(JO)
FEE AND MERCHANT DISCOUNT	:	
ANTITRUST LITIGATION	:	JOINT STATUS CONFERENCE
	:	STATEMENT
	:	
This Document Relates To:	:	CONFERENCE DATE: APRIL 19, 2018
	:	
ALL ACTIONS.	:	
	:	
	X	

The parties respectfully submit this Joint Case Status Report and Proposed Agenda for the Case Management Conference currently scheduled for April 19, 2018.

**I. PENDING MOTIONS**

On April 2, 2018, Wells Fargo filed a letter motion for protective order requesting that the Court quash a Rule 30(b)(6) deposition subpoena served by the Target Plaintiffs. (ECF No. 7178.) The Target Plaintiffs filed their opposition to this letter motion on April 4, 2018. (ECF No. 7181.) The motion is now fully briefed and pending before the Court. The parties will be prepared to argue this motion at the upcoming status conference, if the Court indicates it wishes to hear further argument on the motion.

On February 22, 2018, the 7-Eleven Plaintiffs filed a motion to compel non-party, The Clearing House Payments Company L.L.C. (“TCH”), to produce documents related to its proprietary Real-Time Payments system. (ECF No. 7155.) On March 6, 2018, TCH responded. (ECF No. 7166.) The motion is now fully briefed and is pending before the Court. The parties will be prepared to argue this motion at the upcoming status conference, if the Court indicates it wishes to hear further argument on the motion.

The action captioned *Luby’s Fuddruckers Restaurants, LLC v. Visa Inc., et al.*, 1:17-cv-04555-MKB-JO was transferred to this Court by the Judicial Panel for Multidistrict Litigation.

Plaintiff in that action has filed a motion to remand the action to Texas state court. That motion has been fully briefed and argued by the parties and is pending before the Court.

Plaintiffs have appealed Magistrate Judge Orenstein's Order dated September 27, 2017, regarding the amended complaints, which remains pending before Judge Brodie.

## **II. STATUS OF DISCOVERY**

### **Defendants' Position**

The parties continue to work cooperatively on completing fact discovery and scheduling the remaining party and non-party depositions. With few exceptions, discovery of the defendants, Target Plaintiffs, The Home Depot and the original 7-Eleven Plaintiffs will be completed by April 30.

The parties anticipate needing additional time beyond the existing April 30, 2018 fact discovery deadline to complete discovery of certain non-parties and parties. The parties have been negotiating stipulations that they plan to file with the Court in the coming days, which extend the fact discovery deadline in certain instances and set forth a proposed schedule for contention interrogatories and requests for admission. The extensions for party discovery largely relate to discovery of the purported (b)(3) class representatives, covered by one stipulation, and the "new" individual plaintiffs (*e.g.*, Gulf Oil, Marathon Petroleum, Speedway, Amtrak, Petco, and Priceline), covered by another stipulation. Neither stipulation would alter any other case deadlines ordered by the Court.

Other than the pending motion filed by Wells Fargo, Defendants do not believe that there are any discovery disputes that require the Court's attention at this time.

### **Plaintiffs' Position**

The parties continue to work together to schedule the remaining party and non-party depositions, and have agreed to a short extension of the deadline for certain of those depositions, until June 8, 2018. This agreed stipulation will not affect the overall case schedule, because all parties have agreed that it cannot be used as the basis for an extension of any of the current case schedule deadlines. The parties anticipate that the stipulation also will address the issues related to the service of contention interrogatories and requests for admission, such as timing and number. The parties do not anticipate needing the Court's assistance on these issues but will report to the Court should any of these outstanding issues require the Court's attention.

### **III. STATUS OF DATA REQUESTS**

#### **Plaintiffs' Position**

The parties are continuing to negotiate regarding Visa and Mastercard's responses to Plaintiffs' October 15, 2014, requests for database information. While the parties are not at impasse on any issue as of today, Plaintiffs may have additional progress (or lack thereof) necessitating the Court's attention after April 30, 2018, in advance of the next status conference, and/or through motions practice. Plaintiffs further reserve their right to take any depositions of defendants regarding their database productions, especially given that the data productions may not be completed until after April 30, 2018.

#### **Defendants' Position**

Visa and Mastercard agree that the parties are not at impasse on any issue and there is no present dispute between the parties regarding data. Visa and Mastercard have been in ongoing discussions and have engaged in multiple meet and confers regarding Plaintiffs' October 15, 2014, requests for database information. Visa and Mastercard have spent considerable time and

effort discussing the scope of plaintiffs' numerous data requests with plaintiffs. Visa and Mastercard have begun producing data to plaintiffs, and will continue to do so on a rolling basis. While Visa and Mastercard are using best efforts to produce the agreed upon data to plaintiffs by April 30, given the myriad and scope of requests and multiple rounds of letters, Visa and Mastercard may require a short additional period of time beyond April 30, 2018 to complete their data productions.

To the extent that plaintiffs are suggesting that additional defendant depositions beyond those already noticed still may be necessary, defendants have long objected to any such depositions.

#### **IV. NEXT STATUS CONFERENCE**

The parties request that the Court schedule a status conference for late May or early June, so that any remaining issues can be addressed as they conclude party and non-party depositions.

Dated: April 12, 2018

Respectfully submitted,

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